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Attorneys For Defendants
National Vending Systems, Inc., Mad Dog Energy
Products, Inc., Richard Black, Gary Luckner,
Michael Stein And Mel Hendrix

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION - RIVERSIDE COURTHOUSE

WOODARD INVESTMENTS, INC. an
Oregon corporation, and KEITH
WOODARD, an individual,

Plaintiffs,

vs.

NATIONAL VENDING SYSTEMS,
INC., a California
corporation; MAD DOG ENERGY
PRODUCTS, INC., a California
corporation; RICHARD BLACK, an
individual; GARY LUCKNER, an
individual; MICHAEL STEIN, an
individual; MEL HENDRIX, an
individual; and RICHARD ALLEN,
an individual,

Defendants.

Case No. EDCV 08-01805 SGL (MANx)

DEFENDANTS' EVIDENTIARY
OBJECTIONS TO AND MOTION TO
STRIKE PORTIONS OF PLAINTIFFS'
ADDITIONAL EVIDENCE SUBMITTED IN
CONNECTION WITH DEFENDANTS'
OPPOSITION TO MOTION TO SET ASIDE
RIGHT TO ATTACH ORDERS, QUASH
WRITS OF ATTACHMENT AND RELEASE
PROPERTY LEVIED UPON, ETC.

Date: August 18, 2009
Time: 10:00 a.m.
Courtroom: 580
Roybal Federal Bldg.
255 E. Temple St.
Los Angeles, CA 90012

Defendants NATIONAL VENDING SYSTEMS, INC. ("NVS") and MAD
DOG ENERGY PRODUCTS, INC. ("Mad Dog") [collectively, "Defendants"]
hereby object to and move to strike portions of the Declaration of

1 Sherri Biethman ("Biethman Dec."), Declaration of James Koepsell
 2 ("Koepsell Dec."), Declaration of Jim Rogers ("Rogers Dec."), and
 3 Declaration of Dan Vitt, together with its accompanying Exhibit
 4 "12" ("Vitt Dec."), filed herein by plaintiffs WOODARD INVESTMENTS,
 5 INC. ("Woodard Investments") and KEITH WOODARD ("Mr. Woodard")
 6 [collectively, "Plaintiffs"], in connection with their Opposition
 7 to Defendants' "Motion To Set Aside Right to Attach Orders, Quash
 8 Writs of Attachment, and Release Property Levied Upon" (the
 9 "Motion"), on each of the grounds set forth below.

10 GENERAL OBJECTION TO BIETHMAN DEC.

11 Objection No. 15¹

12 The entirety of the Biethman Dec.

13 Grounds for Objection No. 15:

14 The statements set forth in the Biethman Dec. are
 15 irrelevant pursuant to Federal Rules of Evidence ("FRE") 401 and
 16 402 because, *inter alia*, they do not set forth any of the terms of
 17 the Master Distributor Agreement or its alleged breach which is the
 18 subject of Plaintiffs' Attachment and Defendants' Motion. Indeed,
 19 they all deal with the declarant's purchases of machines from
 20 companies other than Mad Dog or NVS and alleged statements made to
 21 the declarant, not to Plaintiffs.

22 Ruling on Objection No. 15

23 Sustained ____

24 Overruled ____

25
 26
 27 ¹ Defendants' previously filed in connection with their Motion a
 28 first set of Objections and Motion to Strike re Plaintiffs'
 Attachment evidence which contained 14 objections. Defendants,
 therefore, continue to number their objections consecutively.

SPECIFIC OBJECTIONS TO BIETHMAN DEC.

Objection No. 16

That portion of paragraph 4 of the Biethman Dec. which states:

" . . . , a principal at AVS," [p. 2, line 24.]

Grounds for Objection No. 16:

(a) Lack of personal knowledge [FRE 602];

(b) It lacks foundation, i.e., contains conclusory statements not supported by fact; and

(c) It calls for a legal conclusion.

Ruling on Objection No. 16

Sustained _____

Overruled _____

Objection No. 17

That portion of paragraph 5 of the Biethman Dec. which states:

"I contacted "Terry," who produced a document signed a man named Lou Gubitosa, who I understand to be another principal of AVS, granting "Terry" the "exclusive" right to the entire State of Idaho." [p. 3, lines 7-9.]

Grounds for Objection No. 17:

(a) It constitutes hearsay and multiple hearsay [FRE 801(c) and 802];

(b) Lack of personal knowledge [FRE 602];

(c) It lacks foundation, i.e., contains conclusory statements not supported by fact;

- (d) It calls for a legal conclusion;
(e) It violates the best evidence rule;
(f) It is irrelevant [FRE 401 and 402].

Ruling on Objection No. 17

Sustained ____

Overruled ____

GENERAL OBJECTION TO KOEPSSELL DEC.

Objection No. 18

The entirety of the Koepsell Dec.

Grounds for Objection No. 18:

The statements set forth in the Koepsell Dec. are irrelevant pursuant to Federal Rules of Evidence ("FRE") 401 and 402 because, *inter alia*, they do not set forth any of the terms of the Master Distributor Agreement or its alleged breach which is the subject of Plaintiffs' Attachment and Defendants' Motion. Indeed, they all deal with the declarant's purchases of machines from companies other than Mad Dog or NVS, and alleged statements made to the declarant, not to Plaintiffs.

Ruling on Objection No. 18

Sustained ____

Overruled ____

GENERAL OBJECTION TO ROGERS DEC.

Objection No. 19

The entirety of the Rogers Dec.

Grounds for Objection No. 19:

The statements set forth in the Rogers Dec. are

1 irrelevant pursuant to Federal Rules of Evidence ("FRE") 401 and
2 402 because, *inter alia*, they do not set forth any of the terms of
3 the Master Distributor Agreement or its alleged breach which the
4 subject of Plaintiffs' Attachment and Defendants' Motion. Indeed,
5 they all deal with the declarant's purchases of machines from
6 companies other than Mad Dog or NVS, and alleged statements made to
7 the declarant, not to Plaintiffs.

8 Ruling on Objection No. 19

9 Sustained ____

10 Overruled ____

11
12 SPECIFIC OBJECTIONS TO ROGERS DEC.

13 Objection No. 20

14 That portion of paragraph 6 of the Rogers Dec. which
15 states:

16 "I recently learned that other investors in the
17 business opportunity also experienced difficulty
18 selling Buzz Bites and also have lost their
19 businesses. I also recently learned that the
20 territories that I purchased from IVC were not
21 "exclusive" at all, and that the man who had
22 validated the opportunity to me had given me a false
23 name; his real name is Richard Black, not "Richard
24 Allen,". [p. 3, lines 6-11.]

25 Grounds for Objection No. 20:

26 (a) It constitutes hearsay and multiple hearsay [FRE
27 801(c) and 802];

28 (b) Lack of personal knowledge [FRE 602];

1 (c) It lacks foundation, i.e., contains conclusory
2 statements not supported by fact; and

3 (d) It is irrelevant [FRE 401 and 402]..

4 Ruling on Objection No. 20

5 Sustained ____

6 Overruled ____

7
8 GENERAL OBJECTIONS TO VITT DEC. AND EXHIBIT 12

9 Objection No. 21

10 The entirety of the Vitt Dec., together with its Exhibit
11 "12".

12 Grounds for Objection No. 21:

13 The statements set forth in the Vitt Dec., and its
14 Exhibit "12", are irrelevant pursuant to Federal Rules of Evidence
15 ("FRE") 401 and 402 because, *inter alia*, they do not set forth any
16 of the terms of the Master Distributor Agreement or its alleged,
17 breach which is the subject of Plaintiffs' Attachment and
18 Defendants' Motion. Indeed, they all deal with the declarant's
19 purchases of machines from companies other than Mad Dog or NVS, and
20 alleged statements made to the declarant, not to Plaintiffs.
21 Moreover, the documents attached as Exhibit "12" to the Vitt Dec.
22 are hearsay and multiple hearsay [FRE 801(c) and 802], and are also
23 irrelevant inasmuch as they were supplied by Independent Vending
24 Concepts, Kyle Erickson of EnergyVendingBusiness.com and "Spike!
25 Energy Systems" to Vitt - i.e., they were not provided by
26 Defendants nor provided to Plaintiffs in connection with
27 Plaintiffs' entering into the Master Distributor Agreement which is
28 the subject of the Attachment and Defendants' Motion.

1 Ruling on Objection No. 21

2 Sustained ____

3 Overruled ____

4
5 SPECIFIC OBJECTIONS TO VITT DEC. AND EXHIBIT 12

6 Objection No. 22

7 That portion of paragraph 3 of the Vitt Dec. which
8 states:

9 "To prove the point, I was referred to three
10 individuals, Misty Wolbert, Gary Luckner and Richard
11 Allen, who supposedly had purchased several vending
12 machines and were experiencing tremendous success
13 selling Buzz Bites in their exclusive territories.
14 On January 15, 2008, Mr. MacDonald's colleague Bryan
15 Twitchell emailed to me the contact information for
16 these three validators. Attached to this
17 declaration collectively as Exhibit 12 are true and
18 correct copies of Mr. Twitchell's January 15 email
19 and the document that was attached to that email,
20 entitled "Mad Dog Energy Products and Independent
21 Vending Concepts Executive Summary," which explains
22 that Buzz Bites are available for vending sales
23 through an exclusive arrangement with Mad Dog Energy
24 Products, Inc. ("Mad Dog"), among other things". [p.
25 2, lines 13-23.]

26 Grounds for Objection No. 22:

27 (a) It constitutes hearsay and multiple hearsay [FRE
28 801(c) and 802];

(b) Lack of personal knowledge [FRE 602];

(c) It lacks foundation, i.e., contains conclusory statements not supported by fact;

(d) It is irrelevant [FRE 401 and 402].

Ruling on Objection No. 22

Sustained ____

Overruled ____

DATED: August 11, 2009

Respectfully submitted,

SHIELDS LAW OFFICES

By: 

Jeffrey W. Shields

Rick A. Varner

Attorneys for Defendants
National Vending Systems, Inc., Mad
Dog Energy Products, Inc., Richard
Black, Gary Luckner, Michael Stein
and Mel Hendrix

PROOF OF SERVICE[illegible]

I, the undersigned, say: I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 1920 Main Street, Suite 1080, Irvine, California 92614.

I served the foregoing documents described as:

**DEFENDANTS' EVIDENTIARY OBJECTIONS TO AND MOTION TO STRIKE
PORTIONS OF PLAINTIFFS' ADDITIONAL EVIDENCE SUBMITTED IN
CONNECTION WITH DEFENDANTS' OPPOSITION TO MOTION TO SET ASIDE
RIGHT TO ATTACH ORDERS, QUASH WRITS OF ATTACHMENT AND RELEASE
PROPERTY LEVIED UPON, ETC.**

on the interested parties in this action in the following manners:

VIA ELECTRONIC ACCESS:

I hereby certify that on **August 11, 2009**, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system on the following:

Jennifer L. Brockett
Davis Wright Tremaine LLP
jenniferbrockett@dwt.com

David C. Rocker
Davis Wright Tremaine LLP
davidrocker@dwt.com

VIA OVERNIGHT EXPRESS MAIL

I deposited such envelope into the Overnight Express Mail at Irvine, California.

Jennifer L. Brockett
DAVIS WRIGHT TREMAINE LLP
 865 South Figueroa Street, Suite 2400
 Los Angeles, CA 90017

David C. Rocker
DAVIS WRIGHT TREMAINE LLP
1300 S.W. Fifth Avenue, Suite 2300
Portland, OR 97201

Executed on **August 11, 2009** at Irvine, California.

~~RICK A. VARNER~~